

DISCLOSURE & BARRING SERVICE (DBS) POLICY

Contents

1. Purpose	pg 3
2. Scope and Key Principles	pg 3
3. DBS Checks & Levels of Disclosure	pg 3
4. Roles & Responsibilities	pg 5
5. Cost of Disclosure	pg 5
6. Update Service	pg 5
7. Use of Disclosure Information	pg 6
8. Security and Confidentiality	pg 6
9. Retention	pg 6
10. Portability of Disclosures	pg 6
11. Pre-authorisation	pg 6
12. Contractors	pg 7
13. Disputes	pg 7
14. Legal Position	pg 7

Appendices

1. Regulated Activity relating to Children	pg 8
2. Regulated Activity relating to Adults	pg 9
3. Policy on the Secure Storage, Handling, Use, Retention and Disposal of Disclosures and Disclosure Information	pg 11
4. Policy on Foreign Nationals or UK Residents who have Worked or been Resident Overseas in the past Five Years	pg 13

1. Purpose

This policy sets out the approach to criminal background checks within the Council. Management guidance is available in a separate document.

2. Scope and Key Principles

The Council promotes equality of opportunity for all and recognises the importance of employment in the rehabilitation of ex-offenders. As an organisation using the Disclosure and Barring Service (DBS) which was formerly the Criminal Records Bureau (CRB) service to assess applicants' suitability for position of trust, the Council complies fully with the DBS Code of Practice.

After a certain length of time some sentences are considered spent and must be disregarded. Unless the nature of the work means that a role is exempt, applicants are not asked to disclose convictions which are spent under the Rehabilitation of Offenders Act 1974.

Having an unspent conviction will not necessarily bar applicants from employment. Criminal records should be taken into account for recruitment purposes only when a conviction is relevant.

For applicants who are offered employment in certain posts, including those where regulated activity is undertaken, a criminal record check from the DBS will be undertaken.

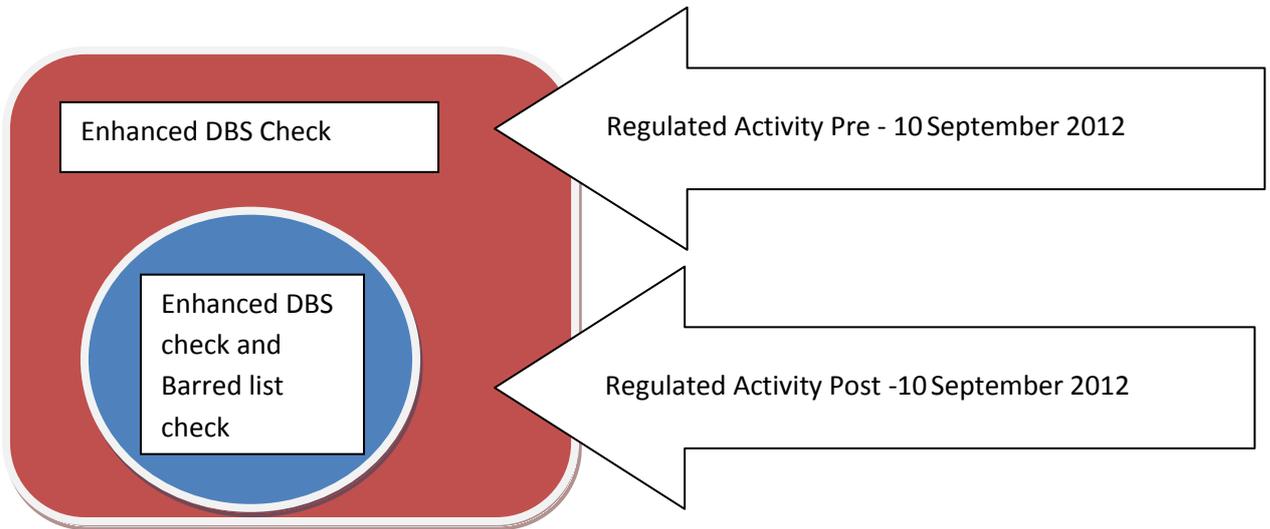
The principles in this policy apply to both paid and volunteer positions.

3. DBS Checks and Levels of Disclosure

The Protection of Freedoms Act 2012 has resulted in a differentiation between those posts which can legally have an Enhanced DBS check and those posts which can also legally be checked against the Children or Adult Barred Lists (an Enhanced check for Regulated Activity). The definition of regulated activity has been changed from 10 September 2012.

The red square in the diagram below represents the posts that fell within the old definition of regulated activity. From 10 September 2012, employees in posts that fall within this area are still entitled to an Enhanced DBS check.

The blue circle represents the new definition of regulated activity. There are now fewer posts that fall within this definition. From 10 September 2012, employees in posts that fall within this area are entitled to an Enhanced check for Regulated Activity.



Managers determining which type of check a post should have should initially consult Appendix B in the Guidance Notes for Managers to establish if a position comes under the post-10 September definition of regulated activity and is therefore entitled to an Enhanced check for Regulated Activity.

If the position does **not** come under this definition then managers should turn to Appendix A in the Guidance Notes for Managers to establish if the position comes under the pre-10 September definition and is therefore entitled to an Enhanced DBS check.

If a post does not come under either definition then it is not entitled to an Enhanced DBS check or an Enhanced DBS check for Regulated Activity. It may be eligible however for a Standard DBS check if it is included in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975.

It is an offence for individuals on the Barred List to apply for posts in regulated activity (post-10 September 2012 definition). Previously it was illegal for them to apply for all the posts illustrated above. In effect this means that individuals who are currently on the Barred List can now apply for posts that fall under the old definition of regulated activity (i.e. regulated activity pre-10 September 2012) so long as these posts do not fall within the parameters of the new definition of regulated activity (post-10 September 2012).

The fact that someone is on the Barred List will not be stated on an Enhanced DBS check, but there will be details of criminal convictions that would indicate that someone might be on the Barred List. If any such disclosures are received the manager, with the assistance of Human Resources, will advise his/her Executive Manager who will notify the Executive Manager with responsibility for Safeguarding Children and Vulnerable Groups. The matter will be investigated thoroughly and Appendix D: 'Cause for Concern' Risk Assessment Proforma will be completed if any such disclosures are received (see Managers' Guidance document).

4. Roles and Responsibilities

It is the responsibility of the Recruiting Manager with HR guidance to determine if a post involves regulated activity and, therefore, if it requires a DBS check to be undertaken and to notify HR of the final decision prior to the role being advertised. All recruitment documentation will be drafted reflecting the requirement.

The Recruiting Manager must be satisfied from the outcome of any DBS check that there are no disclosures that would mean that the applicant is unsuitable for the role for which they have applied before the appointment can be confirmed. If there are any issues, these should be discussed with an Executive Manager who will make the final decision regarding appointment (see Managers' Guidance notes, section 6).

The Recruiting Manager and/or HR have responsibility for using the Update Service to check the status of Certificates that fall within the scope of the new service. This can only be undertaken with the written consent of the individual concerned.

All employees involved in the disclosure process and in making employment-related decisions should be provided with appropriate guidance.

5. Cost of disclosure

The cost of checks relating to appointments to Council posts should be met by the Council.

The cost of checks undertaken by the Council on behalf of contractors and those from whom the Council commissions a service should be met by the contractor depending on the particular circumstances and terms of the contract.

Checks for volunteers are free. A volunteer is currently defined by the DBS as a person who performs an activity which involves spending time, unpaid (except for travelling and other approved out-of-pocket expenses), doing something which aims to benefit someone (individuals or groups) other than or in addition to close relatives.

6. Update Service

The online **Update service** (launched 17 June 2013) allows individuals, if subscribed to it (on payment of an annual fee) to apply for a criminal record check once and then if they need a similar sort of check again, to reuse their existing certificate with the employer checking online to see if it is still up to date. This is called a Status Check.

It has been agreed that this fee will be paid by the Council on obtaining signed agreement from the employee, to allow access to the update service.

To use the Update service, employers do not have to join it or pay a fee in order to check a DBS Certificate. The Council must however have the employee's consent, must be legally entitled to apply for a DBS Certificate of the same type and level that

they are going to check and as explained above, the employee must be subscribed to the Update Service.

7. Use of disclosure information

A disclosure is only requested for the successful candidate following the selection process. Rechecks for existing employees who are subject to a DBS clearance should currently be done every three years.

If a disclosure reveals information about spent or unspent convictions, a decision must then be made by the Executive Manager as to whether it is appropriate for the person to be appointed or continue in post or not.

Further information is outlined within the Guidance for Managers on Criminal Background Checks.

8. Security and Confidentiality

Disclosure information should be treated with the utmost confidentiality and kept in a secure place, such that access to disclosure information is restricted to only those individuals who have a requirement to see it in the course of their duties. Information should only be disclosed to third parties in exceptional circumstances and with the consent of the DBS.

9. Retention

Disclosures should be retained by the Council for a maximum of 6 months after a recruitment decision has been made. Disclosures must be destroyed by secure means e.g. shredding. Exceptionally, a document can be kept longer, but only after consultation with the DBS. See also - appendix 3 'Policy on the Secure Storage, Handling, Use, Retention and Disposal of Disclosures and Disclosure Information.

10. Portability of Disclosures

Portability (accepting as valid a DBS disclosure received previously for a different appointment within the Council) is acceptable in certain circumstances. More detail is given in the Guidance for Managers on Criminal Background Checks.

11. Pre-authorisation

In certain exceptional circumstances when the pressure to fill a vacancy is acute e.g. in order to maintain legal staffing levels in a particular section, it **may** be appropriate to appoint an individual prior to DBS clearance being received (known as pre-authorisation). More detail is given in the Guidance for Managers on Criminal Background Checks.

All cases of pre-authorisation must have Executive Management approval before the appointment starts.

12. Contractors

Departments who employ contractors or commission a service for roles where a DBS check or a DBS with barred list check is required, should make sure safeguards are in place for the relevant checking of contracted staff and see documentary evidence of DBS clearance when contractors are recruited.

13. Disputes

If an employee believes that the information provided in a DBS check is inaccurate or incorrect, then it is the responsibility of the individual to raise this with the DBS.

The Council should base any decision on the information provided by the DBS and this decision will be final.

14. Legal Position

Under the Rehabilitation of Offenders Act 1974, it is unlawful to discriminate against an ex-offender on the grounds of a spent conviction with the exception of those posts exempt from the Act.

The Safeguarding Vulnerable Groups Act 2006, as amended, creates a number of offences to prevent barred people from working in regulated activities. Rushcliffe Borough Council, as an employer and regulated activity provider, and individuals can be convicted of a criminal offence if a person who is barred from engaging in a particular activity does actually engage in that activity. A regulated activity provider also commits an offence if it permits a person to engage in a regulated activity while knowing or having reason to believe that the individual is barred.

The maximum sanctions for these offences are fines of up to £5,000 or up to five years in prison.

Appendix 1 – Regulated Activity relating to Children

What is the definition of young people / children?

A person who is under the age of 18.

What is regulated activity in relation to children?

Regulated activity relating to children is defined as work that a barred person must not do. It is as follows:

Category 1:

- Teaching, training, instructing, caring for or supervising children in an unsupervised capacity;
- Providing advice/guidance on well-being to children in an unsupervised capacity;
- Driving a vehicle for children only in an unsupervised capacity;
- Work for a limited range of establishments (specified places) with opportunity for contact.
- It is work that is done on a 'regular' basis i.e. one or more times a week or on 4 or more days in a 30-day period.

Category 2:

- Relevant personal care e.g. washing or dressing a child; or healthcare by or supervised by a professional, even if done only once
- Registered childminding
- Foster carers.

A DBS check is not required in respect of the activities in categories 1 and 2 if the person undertaking these activities:

- is supervised at a reasonable level (refer to guidance on supervision).
- is providing treatment or therapy (instead of 'health care').
- Is a supervised volunteer – supervised at a reasonable level
- Is carrying out occasional or temporary services e.g. window cleaners.
- Is an office holder e.g. governors

General exceptions:

Regulated activity relating to children does not include:

- Family arrangements, and personal, non-commercial arrangements.
- Activity by a person in a group assisting or acting on behalf of, or under direction of, another person engaging in regulated activity in relation to children.

Appendix 2 – Regulated Activity relating to Adults

What is the definition of a vulnerable adult?

A vulnerable adult will be aged 18 years or over. An adult may be considered to be vulnerable at the time they require certain services provided to them:

- accommodation and nursing or personal care in a care home; or
- personal care in their own home through a domiciliary care agency; or
- health care services provided by an independent hospital, independent clinic, independent medical agency or National Health Service body; or
- is an expectant or nursing mother living in residential care;
- is receiving direct payments from the council in lieu of social care services; or
- services provided in an establishment catering for a person with learning difficulties.

and in consequence of any one, or any combination, of the following factors:

- a substantial learning or physical disability; or
- a physical or mental illness, chronic or otherwise, including an addiction to alcohol or drugs; or
- a substantial reduction in physical or mental capacity due to advanced age;
- they are substantially dependent upon others in performing basic physical functions, or their ability to communicate with those providing services or to communicate with others is severely impaired, and, as a result, they would be incapable of protecting themselves from assault or other physical or mental abuse, or there is a potential danger that their will or moral well-being may be subverted or over powered.

What is regulated activity in relation to adults?

Regulated activities relating to adults are outlined below. There is no requirement to carry out these activities a certain number of times before a person is deemed to be engaging in regulated activity with adults:

- Work undertaken by regulated health care professional e.g. health care assistants, physiotherapists.
- Work undertaken by a person under the direction or supervision of a health care professional
- Personal care provided to an adult e.g. assistance with washing and dressing, eating, drinking and toileting or teaching someone to do these tasks
- Social work: provision by a social care worker of social work which is required in connection with any health services or social services.
- Providing assistance to an adult e.g. with a person's cash, bills or shopping because of their age, illness or disability e.g. collecting a pension

- Providing assistance with the conduct of an adult's own affairs e.g. lasting or enduring powers of attorney or deputies appointed under the Mental Health Act
- Conveying adults for reasons of age, illness or disability to, from or between places where they receive healthcare, personal care or social work.

General exception:

Regulated activity relating to adults does not include:

- Activity by a person in a group assisting or acting on behalf of, or under direction of, another person engaging in regulated activity relating to adults.

Appendix 3 – Policy on the Secure Storage, Handling, Use, Retention and Disposal of Disclosures and Disclosure Information

As an organisation using the Disclosure and Barring Service (DBS) disclosure service to help assess the suitability of applicants for positions of trust, the Council complies fully with the DBS Code of Practice regarding the secure handling, use, retention and disposal of disclosures and disclosure information. It complies fully with its obligations under the Data Protection Act and other relevant legislation pertaining to the safe handling, use, retention and disposal of disclosure information

Storage and Access

- As far as practicable disclosure information sent to the Council by the DBS is clearly labelled and will only be opened by a counter-signatory.
- Documents are stored in a locked, non-portable container. The keys to any containers are kept in a separate locked key cabinet.
- Disclosure information is never kept on an applicant's personnel file.

Handling

- Disclosure information is not passed to persons not entitled to receive it under Section 124 of the 1997 Police Act. Disclosure information is available only to those who are authorised to receive it in the course of their duties. The Council maintains a record of all those to whom disclosure or disclosure information has been revealed and we recognise it is a criminal offence to pass this information to anyone who is not entitled to receive it.
- Documents are only outside this container when being used by a counter-signatory or other authorised person and in no circumstances will they be left unattended.

Usage

- Disclosure information is only used for the purpose for which it was requested and for which the applicant's full consent has been given.

Retention & Disposal

- Once a recruitment decision or other relevant decision has been made, disclosure documents will be shredded as soon as the information is no longer required and normally within 6 months of receipt. In cases of dispute the disclosure documents may be retained until 6 months after the resolution of the dispute. Very exceptionally a document can be kept longer, **but only after consultation with the DBS**. Throughout this time the usual conditions regarding safe storage and strictly controlled access will apply.
- Documents must not be left in an unsecure receptacle whilst awaiting destruction. In order to maintain the Council's DBS database (a record of disclosures undertaken) a note will be made recording the unique reference

number allocated by the DBS, date of disclosure, name of subject, the position for which the disclosure was requested, decision taken, e.g. employed or not employed and date of destruction. No photocopy or other image of the disclosure may be made or retained.

- If a Cause for Concern Risk Assessment is completed this is kept securely for:
 - 6 months from the date of the Assessment if not appointed
 - 25 years from the date of the Assessment if appointedThe form will then be destroyed as above. This is in accordance with the Council's retention policy.
- The purpose of retaining this information is to ensure that if in the future an appointment decision is investigated/challenged, evidence can be provided to support the reasoning for the decision taken.

Assurance and Checks

- The Council will co-operate with requests from the DBS to undertake assurance checks as to the proper use and safekeeping of disclosure Information.
- In addition it will report to the DBS any malpractices in relation to this code of practice or suspected offences in relation to the misuse of disclosures.

Appendix 4 – Policy on Foreign Nationals or UK Residents who have Worked or been Resident Overseas in the past Five Years

The DBS can only access criminal records held on the Police National Computer and this does not hold details of convictions, cautions, reprimands or warnings from outside the United Kingdom. A DBS check will not provide details of an overseas criminal record that may, or may not exist.

All persons who are appointed to a post requiring a DBS check must however still undergo a DBS check regardless of their length of stay in the UK or, even if they have never been resident. All new arrivals to the UK must provide, in addition to all documentation in relation to the Immigration requirements, and DBS requirements, a **STATEMENT OF GOOD CONDUCT (SOGC)**. The definition of new arrival is an applicant who has worked or been resident overseas in the **previous five years** and this includes citizens of the UK who have worked or lived overseas.

It is preferred that the SOGC is obtained via the relevant UK embassy of **every country** in which residency or employment is relevant. **The applicant is responsible for acquiring this.**

Managers should request that the applicant obtains the Certificate of Good Conduct in English, as otherwise costs may be incurred for translation. This document should be considered along with the internal risk assessment process and all other employment checks before taking a decision regarding appointment.

It is recommended therefore that prospective candidates are advised that they should obtain their SOGC(s) prior to application or at least before interview.

References must be obtained from previous employers and in the case of those seeking to work with children and/or vulnerable groups, **one of these references should be from the last employer where the individual worked with vulnerable clients.**

In addition particular care must be taken with the usual range of other pre-employment checks such as confirming identity, qualifications, verifying work permits and eligibility to work and pre-employment medical questionnaires must be carried out.

Although it may be of limited value to ask a person who has little or no previous residence in the UK to apply for disclosure, advice indicates that if the person applies to work in the regulated childcare sector or with vulnerable groups, the employer is required to check the Protection of Children list through the disclosure process.

The unavailability of an applicant's Certificate of Good Conduct may give cause for concern about his or her suitability to be offered employment in a position of trust. Although such candidates will not be barred from working for the Council, appointing managers must make their final recruitment decision with due regard to all the relevant facts, the risk assessment and the overall requirement to protect vulnerable

groups. Any decision not to appoint must be carefully explained to the candidate and reassurance given about the reasons for it.

DBS Advice

The DBS cannot currently access overseas criminal records or other relevant information as part of its disclosure service. If you wish to obtain a fuller picture of an applicant's background, the DBS also provides guidance on how to acquire information from certain countries. Certificates of Good Conduct obtained in this way, from the appropriate UK embassy, can therefore be authenticated by contacting that embassy. Contact details for those countries that have a representative in the UK can be found at www.fco.gov.uk or telephone 020 7008 1500

The DBS is not involved in the processing of applications made by individuals to overseas authorities and therefore will not be responsible for the contents or length of time taken for the information to be returned.